

STATEWIDE INFORMATION TECHNOLOGY WHITE PAPER

White paper: REAL ID Act of 2005

Effective Date: August 11, 2006

Replaces and Supercedes: Not applicable.

I. Procedure Purpose

The purpose of this paper is to provide a brief overview of the impact of the REAL ID statute.

This paper is provided for informational purposes only. Comments, questions and suggestion are welcome and may be directed to the contact information provided below.

II. Definition(s)

Refer to the [Statewide IT Policies and Standards Glossary](#) for a complete list of definitions.

III. Closing

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IV. Cross-Reference Guide

None

V. Administrative Use

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OFFICE OF THE CHIEF INFORMATION OFFICER

WHITE PAPER

REAL ID Act of 2005

July 15, 2006



STATE OF MONTANA
Department of Administration
INFORMATION TECHNOLOGY SERVICES DIVISION



Brian Schweitzer
Governor

C R E D I T S

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- “REAL ID Act.” Wikipedia: The free encyclopedia. 1 June, 2006, 21:43 UTC. Wikimedia Foundation, Inc. Retrieved June 6, 2006 from <http://www.wikipedia.org>.
- “REAL ID Act”. State Implementation Recommendations, National Governors Association, National Conference of State Legislatures, American Association of Motor Vehicle Administrators (April 26, 2006). Retrieved June 6, 2006.

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REAL ID

EXECUTIVE SUMMARY

Enacted in May of 2005, the REAL ID Act of 2005 (United States Public Law 109-13 (H.R. 1268)) requires states to adopt certain standards, procedures and requirements for issuing drivers licenses and identification cards if they are to be accepted as identity documents by the federal government.ⁱ In essence the Act attempts to establish the equivalent of a national ID card without having to do so outright. As passed, the statute will have a wide-reaching impact on citizens and state governments because it will require changes to all 240 million existing licenses and IDs, and alter the business practices of every state motor vehicle agency.ⁱⁱ

This controversial legislation is claimed to deter terrorism by:

- Establishing national standards for state-issued drivers' licenses and non-drivers' identification cards;
- Waiving laws that interfere with construction of physical barriers at the borders;
- Updating and tightening the laws on application for asylum and deportation of aliens for terrorist activity ;
- Introducing rules covering "delivery bonds" (rather like bail bonds , but for aliens that have been released pending hearings);
- Funding some reports and pilot projects related to border security; and
- Changing visa limits for temporary workers, nurses, and Australians.ⁱⁱⁱ

In the United States, drivers' licenses are issued by the states, not by the federal government. States also issue identification cards for non-drivers. States set the rules for what data is on the card and what documents must be provided in order to obtain one. States also maintain databases of licensed drivers and ID-card holders.^{iv}

According to the Act, after May 11, 2008, "a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements" specified in the REAL ID Act. States remain free to also issue non-complying licenses and IDs, so long as these have a unique design and a clear statement that they cannot be accepted for any Federal identification purpose. The federal Transportation Security Administration is responsible for security check-in at airports, so bearers of non-compliant documents would no longer be able to travel on common carrier aircraft.^v

The compliant license/ID standards cover:

- What data must be included on the card;
- What documentation must be presented before a card can be issued; and
- How the states must share their databases.^{vi}

You can find more detailed information about the REAL ID Act at the following website: http://en.wikipedia.org/wiki/REAL_ID_Act_of_2005

DATA THAT MUST BE INCLUDED ON THE LICENSE OR ID CARD

Each card must include, at a minimum:

- The person's full legal name.
- The person's date of birth.
- The person's gender.
- The person's driver's license or identification card number.
- A digital photograph of the person's face.
- The person's address of principal residence. (This would be quite inconvenient for people who need to move frequently and pose a danger to those who need to keep this information secret (judges, undercover law enforcement etc.)
- The person's signature.
- Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.
- A common machine-readable technology, with defined minimum data elements (the details of which are not spelled out, but left to the Secretary of Homeland Security, in consultation with the Secretary of Transportation and the States, to regulate).^{vii}

DOCUMENTATION REQUIRED BEFORE ISSUING A LICENSE OR ID CARD

Before a card can be issued, the applicant must provide the following documentation:

- A photo ID, or a non-photo ID that includes full legal name and birth date.
- Documentation of birth date.
- Proof of Social Security Number or verification that the applicant isn't eligible for one.
- Documentation showing name and principal residence address.
- Documentation showing that the applicant is legally present in the US (in other words, is a US citizen or national, is an alien with permanent or temporary residence status or a valid visa, has applied for or been granted asylum, is a refugee, etc.).
- The state must verify each of the above documents with the issuing agency. The only foreign document that may be accepted for any of the above items is an official passport.^{viii}

LINKING OF LICENSE AND ID CARD DATABASES

Each state must agree to share its motor vehicle database with all other states. This database must include, at a minimum, all the data printed on the state drivers' licenses and ID cards, plus drivers' histories (including motor vehicle violations, suspensions, and points on licenses). Any state that does not link its database, containing records on all drivers and ID holders, to the database of the other states may lose federal funding.^{ix}

Also, the law requires states to verify documents and keep digital copies. This means that states will have to establish and maintain greater storage capacity and be able to connect with other states' databases.

Traffic violations would be required to be sent to the licensing jurisdiction and be recorded. The licensing jurisdiction would be required to act on the violation according to its own laws such as assigning points and insurance surcharges.^x

STATES' CONCERNS

Implementation of REAL ID now rests with the Dept. of Homeland Security (DHS). States' ability to meet requirements of REAL ID by the statutory deadline of May 2008 will directly depend on how much deference DHS is willing to grant to states to comply with the statute and the federal government's commitment to assist states and establish necessary verification systems.^{xi}

Recently, a review of the REAL ID Act was conducted by the National Governors Association (NGA), the National Conference of State Legislatures (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA). This cooperative effort was designed to determine whether the Act could be implemented in a practical, economic and efficient manner and to provide guidance to DHS in developing its regulations. Their review included a detailed section-by-section description of the issues raised by the statute; critical concerns of states stemming from a particular section; states' recommendations for effective implementation; and identification of federal actions required to facilitate implementation.

Despite state efforts to develop workable standards for implementing REAL ID, several critical concerns remain:

1. Even with the most advantageous construction of the regulations, according to the survey responses, the Act could increase equivalent visits to State Motor Vehicle agencies by over 75% annually.
2. Implementing REAL ID requirements will require additional staff, facilities, training and equipment, including the development, expansion and deployment of the five verification systems required by the Act.
3. Because driver licensing is a state function, each jurisdiction will face the challenges of implementation from a different demographic, operational, legislative, technological and fiscal status. Regulations must therefore provide maximum flexibility to ensure compliance can be achieved.
4. There is simply not sufficient time to implement the requirements as defined by the statute. The absence of timely regulations, systems and resources will ultimately overwhelm all good intentions and desire for swift implementation, and must be acknowledged and addressed.
5. Implementation costs will be significant (estimated at \$1-\$2 Billion nationally) and potentially problematic. States are in the process of conducting a fiscal impact survey to accurately and credibly define the level of resources needed to meet federal standards.^{xii}

TIMELINE FOR IMPLEMENTATION

The deadline for complying with REAL ID is May 11, 2008, the date when federal authorities may only accept REAL ID compliant DL/ID for an official purpose. States believe that this timeframe is unreasonable, costly, and may be impossible to meet. The underlying problem is that the statute could be read to require that all DL/IDs be REAL ID compliant as of May 11, 2008. Such an interpretation would require the “reenrollment” of all existing DL/IDs. (More than 200 million nationwide)^{xiii}

The May 11, 2008 deadline may also provide insufficient time for states to adopt conforming legislation, receive federal funding, and honor procurement processes to implement the Act.^{xiv}

MONTANA DOJ – MOTOR VEHICLE ADMINISTRATION

The following information was gathered from discussions with Montana’s DOJ/MVA.

1. Dept. of Homeland Security has said that states will bear the cost of implementing REAL ID, not the federal government. Using the American Association of Motor Vehicle Administrators’ (AAMVA) costing instrument, MVA estimates that it will cost Montana a one-time amount of approximately \$8,554,447 to implement REAL ID. On-going (yearly) costs are estimated to be \$5,856,945. These estimates include both IT and non-IT costs. Additionally, if Montana adheres to the Department of Homeland Security’s card specifications, there will be an additional one-time cost of \$2,944,000 and additional on-going costs of \$2,150,000.
2. Whether or not Montana chooses to implement federal requirements for REAL ID will be a policy decision made by the state legislature.
3. Some states may choose not to implement REAL ID.
4. MVA estimates the cost of issuing a state driver license will increase from the current cost of \$3 to approximately \$15 per driver and that the time associated with issuing a driver license will probably increase by about 20 percent.
5. Montana already meets many of the REAL ID standards, so it will be less difficult for Montana to comply than it will be for other states. For example, Montana already has centralized issuance of drivers’ licenses. However, many issues and difficulties still remain that make implementation problematic.
6. MVA’s assessment is that May 2008 represents a start date for implementation. MVA is not planning to do anything until that time

because there are many questions and issues that the feds have not yet answered.

7. There could be significant push-back from states regarding implementation of REAL ID standards. This could force the feds to establish a federal agency to take over the responsibilities of determining a person's REAL ID compliance. This could be similar to the issuance of a passport. The feds would then notify the state so that REAL ID compliance (for the individual) can be indicated on the person's state driver license. This would essentially take the burden off of the states and place it at the federal level. But this will be a significant political issue because it resembles a National I.D., which is anathema to the feds.
8. The physical security issues surrounding card-holder verification and the technology accompanying that verification remains unresolved at this time.

NEW INFORMATION

The National Governors Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators have presented a paper, "The Real ID Act: National Impact Analysis" now available at: <http://www.nga.org/Files/pdf/0609REALID.PDF>

ⁱ "REAL ID Act". State Implementation Recommendations, National Governors Association, National Conference of State Legislatures, American Association of Motor Vehicle Administrators (April 26, 2006). Retrieved June 6, 2006.

ⁱⁱ Ibid.

ⁱⁱⁱ "REAL ID Act." Wikipedia: The free encyclopedia. 1 June, 2006, 21:43 UTC. Wikimedia Foundation, Inc. Retrieved June 6, 2006 from <http://www.wikipedia.org>.

^{iv} Ibid.

^v Ibid.

^{vi} Ibid.

^{vii} Ibid.

^{viii} Ibid.

^{ix} Ibid.

^x Ibid.

^{xi} "REAL ID Act". State Implementation Recommendations, National Governors Association, National Conference of State Legislatures, American Association of Motor Vehicle Administrators (April 26, 2006). Retrieved June 6, 2006.

^{xii} Ibid.

^{xiii} Ibid.

^{xiv} Ibid.